IN THE HIGH COURT OF BOMBAY AT GOA
PANAJI, GOA

WRIT PETITION NO.201 OF 2007

1. Shri Victor Coutinho alias
   Ventura Martis Coutinho,
   s/o late Caetano P. Coutinho,
   major in age, seaman and his wife;

2. Smt. Percia Coutinho,
   major in age, housewife;

3. Shri Shamir alias Samiro J. Coutinho,
   s/o late Caetano P. Coutinho,
   major in age, service,
   residing at H.No.50,
   Vaddy, Merces, Goa. ... Petitioners.

Versus

1. Shri Conception Coutinho alias
   Conceicao Coutinho,
   s/o late Caetano P. Coutinho,
   major in age, married,
   Advocate ordinarily residing at
   H.No.1768, Buring, Cuncolim,
   and presently staying at
   Flat No.G-5, 2nd Floor,
   Ashdh Hsg. Complex,
   Madel, Margao, Goa.

2. Smt. Lourenca Santana Fernandes,
   w/o late Caetano P. Coutinho,
   aged about 79 years, housewife,
   residing at H.No.1768,
   Buring, Sanvorcotto, Cuncolim,
   Salcete, Goa.

3. Shri Joseph alias Jose Claudio Coutinho,
s/o late Caetano P. Coutinho,
major in age, service,
ordinarily residing at Old Goa
and presently staying at
H.No.1768, Buring, Sanvorcotto,
Salcete, Goa. ... Respondents.

Mr. Nitin Sardessai, Advocate for the Petitioners.

Mr. V.G.P. Dukle, Advocate for the Respondent no.1.

Mr. S.S. Kakodkar, Advocate for the Respondent no.2 and 3.

Coram:- R.S. MOHITE, J.

Date:- 27th July, 2007

ORAL JUDGMENT

Rule.

2. By consent rule is made returnable forthwith.

3. This petition impugned an order passed by the C.J.S.D., Margao on 29.3.2006 in Special Civil Suit No.58/01/A by which the Trial Court has observed that the defendants no.3 and 5 are entitled to withdraw their admission and to amend their written statement. The Trial Court has therefore allowed the application for amendment made by the defendants no.3 and 5 (Ex-D/48).

4. The facts indicate that in this case a joint written statement

was filed by defendants no.1 to 5. Subsequently the application for amending the written statement was made only by defendants no.3 and 5. It was the case of defendant no.3 and 5 in their application for amendment that they were misled by their Advocate. This appears to be a fight between the family members. Defendant no.3 is the mother of the plaintiff, defendant no.1, 4 and 5 are the brothers of the plaintiff and defendant no.2 is the wife of defendant no.1. This is a peculiar case where the allowing of withdrawal of an admission and the amending of the written statement, made with a view of helping the plaintiff when the original written statement by defendants no.3 and 5 was in favour of the co-defendants and was against the plaintiff cannot be said to be a case which displaces the case of the plaintiff. It is sought to be argued that this will affect and prejudice the case of defendants no.1, 2 and 4. This is not necessarily so and can be clarified. In my view it will also not affect defendants no.1. 2 and 4 because in case defendants no.3 and 5 step into the witness box, then previous statements dated 10.9.2001 and 11.7.2003 can be put to them to enable them to explain their admissions if any. In my view, it is not necessary to interfere with the order, but there are two clarifications which are as under:

(a) This amended portion of the written statement will be binding upon defendants no.3 and 5 and will not affect or prejudice the case of defendants no.1, 2 and 4;

(b) It is made clear that in case defendants no.3 and 5 chose to

enter the witness box, their statements as contained in the original written statements can be put to them in the course of the evidence to enable them to explain their earlier stand.

5. With these clarifications the Writ Petition is disposed off.

R. S. MOHITE, J.

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